

NASA

Network
Affiliated
Stations
Alliance

Representing the More than 600
Television Stations Affiliated
with the ABC, CBS and NBC Networks

EX PARTE OF LATE FILED

June 10, 1996

BY MESSENGER

RECEIVED

JUN 10 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The Hon. Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W., Eighth Floor
Washington, D.C. 20054

Re: *Review of the Commission's Regulations Governing
Programming Practices of Broadcast Television Networks
and Affiliates, MM Docket 95-92*

Dear Chairman Hundt:

DOCKET FILE COPY ORIGINAL

The Network Affiliated Stations Alliance represents the more than 600 stations affiliated with the ABC, CBS and NBC networks. Preservation of the right-to-reject rule is crucial to our constituents. We applaud your statement to the Museum of Television and Radio last Thursday that affirmed that "local television stations must be able to air programming that they believe serves their community's public interest needs, such as local public affairs and local sports events, no matter what the networks say." This degree of autonomy is guaranteed by the right-to-reject rule and must be preserved.

We are concerned, as we know you are, with the issue of whether existing affiliation agreements comply in all respects with the right-to-reject rule and basic concepts of licensee responsibility. Certain affiliate contracts do contain provisions that we believe are inconsistent with the rule. We filed copies of certain of these contracts along with our reply comments in the above-captioned docket. In those reply comments, we specifically pointed out the infirmities in those contracts (pp. 6-7). We wrote that certain of the provisions of these contracts "cannot be rationally squared with the Commission's rules" (p. 15). Several group owners, including Pappas Stations Partnership, Blade Communications, Cosmos Broadcasting Corporation, Cox Broadcasting, Inc., First Media Television, L.P., Guy Gannett Communications, and River City Broadcasting, L.P. also questioned these contractual provisions. Several of these group owners noted that these provisions "already push the envelope of permissible restrictions" (Joint Parties Comments, p. 15), while others called on the Commission to "look more closely at the current agreements that are being

No. of Copies rec'd 022
List ABCOE

Patricia C. Smullen
Chair, Steering Committee
Chair, Government Relations
NBC Affiliates Association
California-Oregon Broadcasting
KOBK(TV), Medford, OR
KOTK(TV), Klamath Falls, OR
KLSR-TV, Eugene, OR
KEVU-TV, Eugene, OR

Ken J. Elkins, Chair
NBC Affiliates Association
Pulitzer Broadcasting Company
WESH(TV), Daytona Beach-Orlando
KCCI-TV, Des Moines, Iowa
WLKY(TV), Louisville, Ken.
WDSU(TV), New Orleans, La.
KETV(TV), Omaha, Neb.
KOAT-TV, Albuquerque, N.M.
WXIA(TV), Greensboro, N.C.
WGAL(TV), Lancaster, Pa.
WYFF(TV), Greenville-Spartanburg, S.C.

Andrew Fisher, Chair
ABC Affiliates Association
Cox Broadcasting, Inc.
WSB-TV, Atlanta, Ga.
KTUV(TV), Oakland-S.F., Cal.
WFTV(TV), Orlando, Fla.
WSOC-TV, Charlotte, N.C.
WHIO-TV, Dayton, Ohio
WPXI(TV), Pittsburgh, Pa.

John Garwood
Chair, Government Relations
ABC Affiliates Association
WPLG-TV, Miami, Fla.
Post-Newsweek Stations, Inc.
WFSB(TV), Hartford, Conn.
WJXT(TV), Jacksonville, Fla.
WDIV(TV), Detroit, Mich.
KPRC-TV, Houston, Tex.
KSAT-TV, San Antonio, Tex.

Ralph W. Gabbard, Chair
CBS Affiliates Association
President & Chief Operating Officer
Gray Communications Systems, Inc.
WKYT-TV, Lexington, Kentucky
WYMT-TV, Hazard, Kentucky
WALB-TV, Albany, Georgia
WJHG-TV, Panama City, Florida
KTVE(TV), Monroe, La./El Dorado, Ark.
WRDW-TV, Augusta, Georgia

Howard Kennedy, Chair-Elect
CBS Affiliates Association
KMTV, Omaha, Neb.
Lee Enterprises, Inc.
KGUN(TV), Tucson, Ariz.
KGMB(TV), Honolulu, Haw.
KRQE(TV), Albuquerque, N.M.
KZIA(TV), Las Cruces, N.M.
KOIN(TV), Portland, Ore.
WSAZ, Huntington, W.V.
KSNW(TV), Wichita, Kansas
KSNT(TV), Topeka, Kansas

William F. Sullivan
Chair, Government Relations
CBS Affiliates Association
KPAX-TV, Missoula, Mont.
Evening Post Publishing Co.
KTVO-TV, Billings, Mont.
KRTV(TV), Great Falls, Mont.

The Honorable Reed E. Hundt
June 10, 1996
Page 2

entered into between the networks and affiliates to ensure that the envelope has not already been pushed open" (Pappas Comments, p. 4).

Given these explicit complaints about certain current affiliation agreements by organizations and companies representing some 650 broadcast stations, we were quite surprised to read in your speech that you believe that "no affiliate organization or group owner has complained to the Commission about" these contracts. It is simply a fact that literally hundreds of stations now have brought this issue before the Commission. The question now is simple: what regulatory response is necessary?

In your speech, you suggested that it may "make more sense" to "modify or clarify" the right-to-reject rule rather than find that these "free-market contracts" violate the rule as it existed when these agreements were executed. We strongly disagree with this suggestion. It is the Commission's responsibility to enforce its rules rather than simply change them for the convenience of those who have disregarded the rules for their own economic benefit.

Taken to its logical conclusion, the principle suggested in your speech would undermine entirely the rule of law at the Commission. Should the Commission modify its equal employment opportunity rules when it finds that a licensee has failed to live up to those rules? Should it modify its foreign ownership rules when it finds that a licensee has adopted an illegal structure? Should it eliminate its cross-ownership rules rather than force a powerful company to divest properties that it cannot own consistently with those rules? It is obvious, of course, that all these questions have been and should be answered in the negative. In each case, the Commission has required companies to pay forfeitures, unwind transactions or divest properties regardless of the enormous economic impact of faithfully interpreting the law.

The characterization of these agreements as "free-market contracts" also is mistaken. Affiliation agreements in general are not always negotiated on an even basis between the parties. Rather, networks may present affiliation agreements to affiliates permitting few provisions to be negotiated. One need only review the virtually identical nature of these contracts across the various networks to verify the accuracy of this statement. Because the bargaining position of individual affiliates may be much weaker than that of networks, affiliates have little practical choice but to enter into agreements that are presented to them by the networks even if they disagree with essential terms of those agreements. This is particularly true for the most vulnerable and least powerful small-market stations, broadcasters that the rule is particularly meant to protect. (The relative bargaining power of networks and affiliates is described more fully in our comments and reply comments in this proceeding, as well as in two studies by National Economic Research Associates, Inc. that we submitted in this docket.)

The Honorable Reed E. Hundt
June 10, 1996
Page 3

When presented squarely with a question of whether an agreement complies with the law, the duty of a regulatory agency is simply to answer the question. Changing the law to accommodate an agreement that may violate the law is an inappropriate regulatory response. In this case, the Commission should (1) move expeditiously to a vote in the above-captioned docket, which we understand now is ripe for decision by the Commission and (2) in a separate docket, either decide whether the current affiliation agreements comply with the rule or seek comment on whether these agreements comply with the rule. If the Commission determines that portions of these agreements are inconsistent with the rule, those contractual provisions should simply be declared to be unenforceable.

Respectfully submitted,

THE NETWORK AFFILIATED STATIONS ALLIANCE

PATRICIA C. SMULLIN
CHAIR, GOVERNMENT RELATIONS
NBC AFFILIATES ASSOCIATION

KEN J. ELKINS, CHAIR
NBC AFFILIATES ASSOCIATION

ANDREW FISHER, CHAIR
ABC AFFILIATES ASSOCIATION

RALPH W. GABBARD, CHAIR
CBS AFFILIATES ASSOCIATION

HOWARD KENNEDY, CHAIR-ELECT
CBS AFFILIATES ASSOCIATION

WILLIAM F. SULLIVAN
CHAIR, GOVERNMENT RELATIONS
CBS AFFILIATES ASSOCIATION

JOHN GARWOOD
CHAIR, GOVERNMENT RELATIONS
ABC AFFILIATES ASSOCIATION

Counsel

Wade H. Hargrove
Brooks, Pierce, McLendon,
Humphrey & Leonard
Post Office Box 1800
Raleigh, N.C. 27602

Werner K. Hartenberger
Dow, Lohnes & Albertson
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20037

Kurt A. Wimmer
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C.

The Honorable Reed E. Hundt

June 10, 1996

Page 4

cc: The Hon. James H. Quello
The Hon. Susan Ness
The Hon. Rachelle B. Chong

Julius Genachowski, Esq.

Lauren J. Belvin, Esq.

David R. Siddall, Esq.

Jane Mago, Esq.

Mr. Roy J. Stewart

Renee Licht, Esq.

Docket File

Counsel for ABC, CBS, NBC and Fox